REMARKS

This application has been reviewed in light of the Office Action dated 07/06/2009. Claims 1 – 12 are pending in this application.

Claims 1, 5 - 8 and 11 are rejected, under 35 U.S.C. §102(b), as being anticipated in view of Harma (US Patent No. 2001/0053691) hereinafter ("Harma `691"). The Applicant acknowledges and respectfully traverses the raised anticipation rejection in view of the following remarks.

As the Examiner is aware in order to properly support an anticipation rejection under 35 U.S.C. 102(b), the cited reference Harma `691, must disclose each and every feature of the presently claimed invention. The Harma `691 reference discloses a method for the distribution and execution of recreational applications in mobile telecommunications devices. The reference describes a very specific series of steps, highlighted in yellow below in Harma's Fig. 1, that must occur in order for a first user to initiate communication with a second user and propose the playing of a game that involves the two players taking part in the game simultaneously.
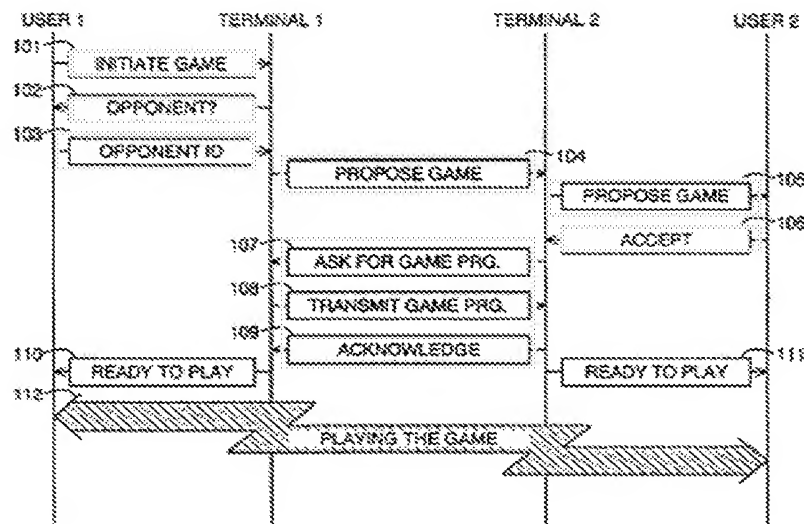

Fig. 1

It is this series of steps that juxtaposes the reference of Harma `691 to the Applicant's communication method.   Applicant has amended claim 1 to include the step of sending an initial multimedia message having the programming agent included in this first, initial message and ready to activate immediately upon receipt by the second terminal.   As now recited in claim 1 a programming agent is *initially* communicated from a first terminal to a second terminal with the message and is *automatically started* at the second terminal as recited below;

1.   A communication method between at least two terminals (10A, 10B), and based on the sending from a first terminal (10A) to at least one second terminal (10B) of *an initial multimedia message* comprising a programming agent (36) *including an encoded program for automatically undertaking a desired function at the at least one second terminal (10B),* consisting in automatically starting, using the programming agent, the establishment of a phone link between the first terminal (10A) and the at least one second terminal (10B). (Emphasis Added.)

The Harma `691 reference fails to teach, disclose, or suggest in any way the claimed feature of sending the initiating message and program code with the very first transmission.  Furthermore, Applicant's claimed invention also "automatically" starts and does not, as in Harma `691 and shown in Fig. 1 above, include the steps of acknowledgement by the second user at step 105, accepting by the second user at step 106, asking for the game program at step 107, a transmission or downloading of the game program at step 108, a further acknowledgment that the game is downloaded at step 109 and an indication by each user that they are ready to play at steps 110 and 111. This series of time consuming steps in Harma specifically teaches away from the object

of the Applicant's invention of automatically starting with minimum latency as stated in Applicant's Background of the Invention;

> "The mobile terminals environment is thus subject not only to latency problems, but also to the constraints of response immediacy. That is, the possibility of sending data by communicating them instantly, i.e. in real time, is an important need. But the retransmission or the response from the terminal receiving these data must also be capable of being carried out immediately. The immediacy need, involving minimum latency in communications operated among terminals, is all the more necessary as the obtaining of immediate communications of SMS or MMS messages, for example between remote mobile terminals, i.e. far away from one another, can become crucial, if personal safety issues are involved. In this context, the information exchanged among terminals must be done practically immediately." (p. 3 ll. 4 -14)

The Applicant's use of a programming agent that automatically starts or initiates the phone link or a data communications link between the terminals removes a number of the steps recited in the Harma reference. For its part, Harma `691 discloses different steps for downloading the software either from the terminal of the first user, from a network server, or from the terminal of a cellular radio system and by using different transfer links.   All of Harma's methodologies require the constraint of time consumption particularly in downloading large software programs to a device such as a mobile phone having limited memory resources.

In contrast, the Applicant's present invention has minimum download time because as shown in the Applicant's specification in Figs. 2 and 3 and described on pg. 8, ll. 10 – 28 the Applicant's programming agent contains specific encoded instructions;

> "According to the programming script, the agent corresponds to specific applications containing encoded instructions to automatically execute, for example a postcard composition, the organization of image data formatting according to the display capacity of a terminal, the management of the communication of the data with other programming agents, or any other imaging application capable of being useful for terminal use."

The agent as encoded specific instructions to for instance organize image data is encoded digital data within the MMS architecture and linked to a multimedia message and therefore easily transmitted from a server to an identified mobile terminal

The Harma `691 reference arguably discloses an agent program, as recited in paragraph 0075, as "an active component of the recreational software" and as "a collection of processes that interact with the user." The reference further describes in paragraph 0076, the differences from the agent program and the field which consists of the game board and game pieces, whereas the agent consists of all those processes that are related to maintaining and changing locations and mutual relations of the pieces on the board." The important aspect of the agent in this applied reference is that it is a part of the downloaded software program, and unlike as recited in the Applicant's claimed steps above, it is not automatically starting but instead begins after a series of steps and acknowledgements by each of the users. Importantly, the agent of the Harma `691 reference also performs as a monitor of certain characteristics of the game but does not in any manner automatically establish a phone link or a data communications link between the first and second user. In Harma `691, a series of acknowledgments must be sent and received as the players indicate their readiness, and from this acknowledgement to execute the initialization of the agent program, finally establish the link and begin play between the first and second users.

The failure of the Harma `691 reference to teach, disclose or support the feature of automatically starting as recited in the Applicant's present invention therefore fails to support an anticipation rejection. The Applicant respectfully requests withdrawal of the anticipation rejection of claims 1, and the remaining rejected claims 5 - 8 and 11 where the remaining claims are all dependent either directly or indirectly on claim 1 which is now believed to be allowable in view of the above remarks and amendments.

Each of the claims rejected for obviousness under §35 U.S.C. 103(a) are dependent claims and are dependent directly or indirectly on claim 1 and thus, in view of the allowability of claim 1 as set forth above, the Applicant believes these claims to be allowable as well. However in order to be fully responsive to the obviousness rejections, the Applicant acknowledges and respectfully addresses and traverses the raised obviousness rejections in view of the following remarks.

Claims 2 - 4 are rejected as obvious under 35 U.S.C. 103(a) as being unpatentable over Harma `691 in view of Tornqvist U.S. Patent No. 6,055,424 hereinafter Tornqvist `424. Tornqvist `424 does disclose that a user prompt may be an audible or visible message or the activation of a ring tone and mentions the use of a GSM system. However, either alone or in combination the references of Harma `691 and Tornqvist `424 still fail to teach or support a programming agent that consists of automatically starting.

Claims 9 and 10 are rejected as obvious under 35 U.S.C. 103(a) as being unpatentable over Harma `691 in view of Hunter U.S. Patent No. 2004/0005915 hereinafter Hunter `915. Hunter `915 discloses the capability of communicating with a third terminal through a link such as Bluetooth and the creation of video clips, however either alone or in combining Hunter `915 with the Harma `691 reference, the references also fail to disclose the specific feature of automatically starting of the Applicant's invention.

Claim 12 is rejected as obvious under 35 U.S.C. 103(a) as being unpatentable over Harma `691 in view of Kanamaru U.S. Patent No. 2003/0134623 hereinafter Kanamaru `623. The Applicant acknowledges and respectfully traverses the raised obviousness rejections in view of the following remarks.

As the Examiner is aware, in order to support an obviousness rejection under 35 U.S.C. 103(a) the combined references must provide some teaching or disclosure that

would lead one of skill in the art to combine the references as asserted in the Official Action. The Kanamaru `623 reference describes the use of a distribution station 1, an exchange station 2, a terminal device 3 and a target device 4 within a mobile communication system. Through commands from the distributing station 1 and the exchange station 2 programs are downloaded and executed on the terminal device 3 when the terminal device is within an area of the distributing station 1. If the terminal device 3 leaves the area of the distributing station 1 a command is sent from the distributing station 1 to the exchange station 2 as a notification of service completion and the exchange station 2 transmits this notification to the terminal device 3. The terminal device 3 then executes a command to stop an executed program and to delete that program based upon this notification from the exchange station 2. The deletion of an executed program on the terminal device 3 only occurs if this notification is received from an external source the exchange station 2. This is in contrast to the Applicant's programming agent that is deleted upon deactivation, either "automatically when the data packet is sent to the server 20 by the link 6 or by the user, from the terminal 10." pg 10 ll. 30 – pg 11 ll. 1 In combination, the Harma `691 and the Kanamaru `623 fail to teach, disclose or suggest the automatic destruction of the program as recited in the Applicant's claim 12.

Even if each of the references cited above can be combined with the Harma `691 reference, these combinations still fail to teach, disclose or suggest the Applicant's presently claimed invention.

Therefore, since the combined references raised by the Examiner do not contain all of the features and limitations in the present invention, the references by definition do not teach or suggest the present invention to one of ordinary skill in the art, as the test set forth in Graham v. John Deere Co. requires. 383 U.S. 1 (1966). The Graham test also requires one to ascertain the differences between the present invention and the

prior art. The prior art, as discussed above, is starkly different from the present invention. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw all rejections.

The Applicant has added claims 13 – 18 in order to more fully describe the features of sending an initial multimedia message, starting a programming agent and automatically destroying the programming agent, features not found in any of the prior art references.

If any further amendments are necessary to place this case in condition for allowance the Examiner is respectfully requested to contact the undersigned attorney of record to discuss the same. In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and the allowance of the present application.

Respectfully submitted,
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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.